

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-07-SE-310
Cardinal Broadband LLC,)	NAL/Acct. No. 200832100069
aka Sovereign Telecommunications,)	FRN No. 0018035063
a wholly owned subsidiary of Cardinal)	
Communications, Inc.)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 15, 2008

Released: August 15, 2008

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Cardinal Broadband, LLC, aka Sovereign Telecommunications, a wholly owned subsidiary of Cardinal Communications, Inc. (hereinafter, “Cardinal”), apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000) for willful violation of Section 1.17(a)(2) of the Commission’s Rules (“Rules”).¹ The noted apparent violation involves Cardinal’s provision of incorrect material factual information to the Commission without a reasonable basis for believing that the information was correct and accurate.

II. BACKGROUND

2. On July 13, 2007, the Commission received a complaint alleging that Cardinal, an interconnected Voice over Internet Protocol (“VoIP”) service provider,² was not providing E911 service in a condominium complex called Millstone in Golden, Colorado. Specifically, the complaint alleged that “no one in the complex can call 911 and get our local police department.” The complaint further alleged that the local police department had visited the condominium complex to confirm the situation and had provided residents a flyer advising them that they did not have 911 service and that they should call the police department’s regular number in case of emergency. This complaint was subsequently referred to the Enforcement Bureau’s Spectrum Enforcement Division (“Division”) for investigation. During a follow-up phone call on August 24, 2007, the complainant informed Division staff that he and his neighbors had had a form of E911 service for approximately two weeks. The complainant indicated that the 911 calls now went to a third party, which would forward the call and the 911 caller’s address to the appropriate emergency personnel. The complainant also asserted that conventional landline telephone

¹ 47 C.F.R. § 1.17(a)(2). In a companion decision issued concurrently with this *NAL*, we propose a forfeiture of \$25,000 against Cardinal for its willful and repeated failure to provide fully compliant E911 service in apparent violation of Section 9.5(b) of the Rules. *Cardinal Broadband LLC*, Notice of Apparent Liability and Order, DA 08-1920 (Enf. Bur., rel. August 15, 2008) (“*Cardinal VoIP E911 NAL*”).

² An interconnected VoIP service is a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet Protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network (“PSTN”) and to terminate calls to the PSTN. See 47 C.F.R. § 9.3; see also *IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, ¶ 24 (2005) (“*VoIP 911 Order*”), *aff’d sub nom. Nuvio v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

service was not available at Millstone because an affiliate company of Cardinal constructed the condominium complex and did not permit it to be wired for conventional landline service.

3. On September 10, 2007, the Division issued a letter of inquiry (“LOI”) to Cardinal directing it to provide certain information concerning its provision of interconnected VoIP service.³ In its response, Cardinal admitted that it “resells” telephone service but claimed that it does not provide an “interconnected VoIP service.”⁴ Specifically, Cardinal argued that “the service Cardinal resells does not require ‘a broadband connection from the user’s location’ ... [or] ... ‘internet protocol-compatible customer premises equipment [“CPE”]” and, thus does not meet two of the four criteria for interconnected VoIP service.⁵ Relying on its claim that the service it provided was not interconnected VoIP service, Cardinal did not respond to the remainder of the LOI.

4. During internet research on the website of Cardinal’s wholly-owned subsidiary, Broadband, the Division found marketing materials that included the following statement: “Our state-of-the-art phone service transports voice data using both regular phone lines and the Internet. Getting connected to our broadband network is easy. You simply connect your telephone to your Digital Telephone adaptor and use your phone service like you do today.”

5. On November 20, 2007, the Division directed a follow-up LOI to Cardinal, attaching the marketing materials found on the Broadband website.⁶ In a preliminary e-mail response, Cardinal stated that:

In my initial response I relied on the information provided to me verbally by the employees of our subsidiary, Cardinal Broadband. Somewhere we had a communication break down because I agree with you that anywhere a customer must use an internet adapter to have telephone service would definitely qualify as Interconnected VoIP.⁷

Beyond this admission, in its response to the follow-up LOI, Cardinal provided additional information confirming that the company is an interconnected VoIP service provider.⁸

³ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Cardinal Communications, Inc. (September 10, 2007) (“LOI”).

⁴ Letter from Edward A. Garneau, Chief Executive Officer, Cardinal Communications, Inc., and Ronald S. Bass, Principal Accounting Officer, Cardinal Communications, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Thomas D. Fitz-Gibbon, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (October 9, 2007) (“LOI Response”) at 3.

⁵ *Id.* at 3 (emphasis in original).

⁶ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Ronald S. Bass, Principal Accounting Officer, Cardinal Communications, Inc. (November 20, 2007) (“Second LOI”).

⁷ Electronic Mail Message from Ronald S. Bass, Principal Accounting Officer, Cardinal Communications, Inc., to Thomas D. Fitz-Gibbon, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (November 30, 2007).

⁸ *See Cardinal VoIP E911 NAL* at ¶ 12.

III. DISCUSSION

A. Cardinal Apparently Provided Incorrect Material Factual Information to the Commission

6. Section 1.17 of the Rules⁹ provides, in pertinent part, that in any investigation, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

Any person who has received a letter of inquiry from the Commission or its staff or is otherwise the subject of a Commission investigation is subject to this rule.¹⁰ In expanding the scope of Section 1.17 in 2003 to include written statements made without a reasonable basis for believing the statements are correct and not misleading, the Commission explained that it intended this requirement to clarify the obligations of persons dealing with the Commission, ensure that they exercised due diligence in preparing written submissions, and enhance the effectiveness of the Commission's enforcement efforts.¹¹ Thus, even absent an intent to deceive, a false statement may constitute an actionable violation of Section 1.17 of the Rules if provided without a reasonable basis for believing that the material factual information it contains is correct and not misleading.¹²

7. In its response to the first LOI, Cardinal claimed that its telephone service is not interconnected VoIP service because it does not require a broadband connection from the user's location or Internet protocol-compatible CPE, and thus the service fails to meet two of the four criteria defining interconnected VoIP service. Our review of Cardinal's marketing materials,¹³ however, indicates that a broadband connection and, at least in some locations, a digital telephone adapter were required for Cardinal's digital telephone service. We therefore conclude on the basis of Cardinal's marketing materials that it already knew it was providing interconnected VoIP service. Moreover, as noted above, Cardinal subsequently admitted that the service it provides is interconnected VoIP service. Cardinal's earlier claim that the service it provides does not require a broadband connection from the user's location or Internet protocol-compatible CPE is, therefore, incorrect material factual information.

⁹ 47 C.F.R. § 1.17.

¹⁰ 47 C.F.R. § 1.17(b)(4).

¹¹ *In the Matter of Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4016-17 ¶ 1-2, 4021 ¶ 12 (2003) ("*Amendment of Section 1.17*"), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004).

¹² *See Amendment of Section 1.17*, 18 FCC Rcd at 4017 ¶ 2 (stating that the revision to Section 1.17 is intended to "prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive").

¹³ *See* ¶ 4, *supra*.

8. As the Commission has stated, parties must “use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. A failure to exercise such reasonable diligence would mean that the party did not have a reasonable basis for believing in the truthfulness of the information.”¹⁴ It does not appear that Cardinal had a reasonable basis for believing that the information it initially provided was correct and not misleading. We think that, had it exercised even a minimum of diligence prior to the submission of its initial LOI response, Cardinal would not have submitted incorrect or misleading material factual information.¹⁵ Although we have insufficient information to conclude that Cardinal’s provision of incorrect material factual information was intentional in violation of Section 1.17(a)(1) of the Rules,¹⁶ we find that Cardinal apparently willfully¹⁷ violated Section 1.17(a)(2) by providing material factual information that was incorrect without a reasonable basis for believing that the information was correct and not misleading.¹⁸

B. Proposed Forfeiture

9. Section 503(b) of the Act¹⁹ authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act. In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²⁰

¹⁴ *Amendment of Section 1.17*, 18 FCC Rcd at 4021 ¶ 12.

¹⁵ See, e.g., *Syntax-Brilliant Corporation*, Forfeiture Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6323 6342 ¶ 44 (2008) (“*Syntax-Brilliant Further NAL*”) (finding that a television manufacturer apparently provided incorrect material information concerning its importation and interstate shipment of non-DTV-compliant televisions without a reasonable basis for believing that the information was correct and not misleading, in violation of Section 1.17(a)(2) of the Rules); *Citicasters License, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19324, 19338 ¶ 40 (2007) (“*Citicasters*”) (forfeiture paid) (finding that a licensee’s false certification that it had not violated the Act or any Commission rules during the preceding license term had no reasonable basis but was not made with the intent to deceive Commission and, therefore, apparently violated Section 1.17(a)(2) of the rules)“.”

¹⁶ 47 C.F.R. § 1.17(a)(1),

¹⁷ Section 312(f)(1) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

¹⁸ We further note that Cardinal initially failed to respond to all of the questions in the LOI, which itself is a violation of a Commission order and subject to forfeiture. See, e.g., *Hauppauge Computer Works, Inc.*, Notice of Apparent Liability, 23 FCC Rcd 3684 ¶ 8 (Enf. Bur., Spectrum Enf. Div. 2008) (proposing an \$11,000 forfeiture for failure to provide complete response to Letter of Inquiry) (forfeiture paid). Given that Cardinal ultimately responded to the LOI in full and our Section 1.17 holding largely relies on the same facts, however, we will exercise our prosecutorial discretion here and not propose an additional forfeiture for Cardinal’s incomplete initial response to our LOI.

¹⁹ 47 U.S.C. § 503(b).

²⁰ 47 U.S.C. § 503(b)(2)(E).

10. Under the *Forfeiture Policy Statement*²¹ and Section 1.80 of the Rules,²² the base forfeiture amount for misrepresentation or lack of candor is the statutory maximum.²³ Therefore, for common carriers such as Cardinal,²⁴ the statutory maximum is \$130,000 for each violation or each day of a continuing violation. The Commission has imposed the statutory maximum penalty against common carriers for the intentional provision of incorrect material factual information.²⁵ Because we do not have evidence that the misrepresentation was intentional and Cardinal provided the correct information against its interest and prior to any formal Commission action, we impose a lesser forfeiture penalty here.²⁶ Nonetheless, we find a significant forfeiture appropriate. The Commission has stated that “[we rely] heavily on the truthfulness and accuracy of the information provided to us. If information submitted to us is incorrect, we cannot properly carry out our statutory responsibilities.”²⁷ Cardinal’s failure to exercise due diligence to ensure that the information provided in its initial LOI response was correct and not misleading hampered our ability to properly carry out our statutory responsibilities and consumed scarce Commission resources. Although Cardinal ultimately provided the correct information, it did so only after the Bureau sent the company a follow-up LOI directing it to provide substantially the same information requested in the first LOI. Accordingly, considering all of the enumerated factors and the particular circumstances of this case, we find that a forfeiture of \$25,000 is warranted here for Cardinal’s apparent willful violation of Section 1.17(a)(2).

²¹ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999).

²² 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures.

²³ See, e.g., *SBC Communications, Inc.*, Notice of Apparent Liability, 16 FCC Rcd 19091, 19120 (2001) (statutory maximum forfeiture amount proposed for intentional violation of Section 1.17 of the Rules) (subsequent history omitted).

²⁴ As noted above, Cardinal is a reseller of Qwest analog telephone service and therefore is subject to the forfeiture penalties applicable to common carriers. See, e.g., *Telrite Corp.*, Notice of Apparent Liability and Order, 23 FCC Rcd 7231 (2008) (proposing a forfeiture for non-payment of universal service contributions against a toll reseller as a common carrier); *Regulatory Policies Concerning Resale And Shared Use Of Common Carrier Services And Facilities*, Report and Order, 60 FCC 2d 261 at ¶ 101(1976) (subsequent history omitted) (“Resellers will be offering a communications service for hire to the public just as the traditional carriers do. The ultimate test is the nature of the offering to the public. No one contends that resellers will make a private offer of communications service rather than a public offering. Nor we will permit resellers to operate in a discriminatory fashion. Accordingly, the offering which resellers will make will satisfy the ‘*sine qua non*’ of common carrier status, and they will be considered as such.”). See also 47 C.F.R. § 63.01 (granting blanket Section 214 authority to domestic carriers for the construction and operation of all new lines).

²⁵ See note 34, *supra*.

²⁶ See, e.g., *Access.1 New York License Company, LLC*, Notice of Apparent Liability, 22 FCC Rcd 15205, 15209 ¶ 11 (Media Bur. 2007) (forfeiture amount proposed for provision of incorrect material factual information adjusted downward from statutory maximum amount of \$32,500 to \$10,000 on basis that violation was unintentional). Compare *Syntax-Brilliant Further NAL*, 23 FCC Rcd at 6343 ¶ 46 (proposing statutory maximum forfeiture (\$11,000) for apparent negligent misrepresentation based on totality of the circumstances; company corrected the erroneous information only after the Commission had relied on it in an earlier enforcement action); *Intelsat North America*, Notice of Apparent Liability, 21 FCC Rcd 9246, 9250 ¶ 12 (Enf. Bur., Inv. & Hearings Div. 2006) (proposing statutory maximum forfeiture (\$11,000) for apparent negligent misrepresentation based on the totality of the circumstances, including ability to pay and the Commission’s reliance on the incorrect information). We note that in the *Syntax-Brilliant* and *Intelsat* cases, our statutory maximum forfeiture was significantly less than that applicable to broadcast licensees and common carriers.

²⁷ *In the Matter of Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Notice of Proposed Rulemaking, 17 FCC Rcd 3296, 3297 ¶ 3 (2002).

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,²⁸ Cardinal Broadband LLC **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for providing incorrect material factual information to the Commission in willful violation of Section 1.17(a)(2) of the Rules.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Cardinal **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Cardinal will also send electronic notification on the date said payment is made to Thomas.Fitz-Gibbon@fcc.gov and Ricardo.Durham@fcc.gov.

14. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Ronald S. Bass, Principal Accounting Officer, Cardinal Communications, Inc., 11101 120th Avenue, Suite 220, Broomfield, CO 80021.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

²⁸ *Id.* §§ 0.111, 0.311 and 1.80.